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Medina General Construction, LLC and Laborers Local 645, a/w Laborers International Union of North America. Cases 25–CA–224263 and 25–CA–225180

February 11, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS EMANUEL
AND RING

The General Counsel seeks a default judgment in this case on the ground that Medina General Construction, LLC (the Respondent) has failed to file an answer to the consolidated complaint. Upon charges filed by Laborers Local 645, a/w Laborers International Union of North America (the Charging Party) on July 23 and August 7, 2018, respectively, the General Counsel issued an Order consolidating cases, consolidated complaint and notice of hearing against the Respondent on November 10, 2020, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On December 21, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On December 22, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response to the notice. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively states that unless an answer is received on or before November 24, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 2, 2020, advised the Respondent that unless an answer was received by December 9, 2020, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

¹ *Continental Packaging Corp.*, 327 NLRB 400, 401 (1998), citing *Tropicana Products*, 122 NLRB 121 (1958); see also *Valentine Painting*

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the consolidated complaint to be admitted as true, and we grant the General Counsel's Motion to Transfer Case to the Board and for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Lafayette, Indiana and has been engaged in the business of general construction.

Annually, the Respondent, in conducting its operations, purchases and receives at its Lafayette, Indiana facility goods valued in excess of \$5000 directly from entities located outside the State of Indiana.

A subpoena duces tecum (No. B-1-139LP4N) was properly served upon the Respondent by certified mail on October 30, 2018, requiring and directing the Respondent to appear before the Regional Director on November 14, 2018 and produce certain documents relevant to whether the Respondent's operations meet the Board's standard for assertion of jurisdiction. Since October 30, 2018, the Respondent has not filed a Petition to Revoke the subpoena duces tecum. The Respondent did not appear on November 14, 2018, nor has Respondent produced the documents requested by the subpoena duces tecum.

Under these circumstances, where the Respondent has refused to provide information relevant to the Board's jurisdictional determination, the General Counsel need only prove statutory jurisdiction in order to establish a sufficient basis for assertion of jurisdiction.¹

Accordingly, we find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Charging Party is a labor organization within the meaning of Section 2(5) of the Act. We further find that Bricklayers and Allied Crafts Local 4 (Local 4) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, Jason (last name unknown) held the position of the Respondent's Superintendent and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

2. About July 11, 2018, the Respondent, by Jason (last name unknown), at the Respondent's baseball stadium

& *Wallcovering*, 331 NLRB 883, 883-885 (2000), enfd. 8 Fed. Appx. 116 (2d Cir. 2001).

jobsite in South Bend, Indiana, interrogated employees about their union membership, activities, and sympathies.

3. About July 13, 2018, the Respondent discharged its employees Perry Bradshaw and Jonathan Williams.

4. The Respondent engaged in the conduct described in Paragraph 3 because the named employees of the Respondent formed, joined, and assisted Local 4 and engaged in concerted activities, and to discourage employees from engaging in these activities.

CONCLUSIONS OF LAW

By the conduct described above in paragraph 2, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act. By the conduct described above in paragraph 3, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent unlawfully discharged Perry Bradshaw and Jonathan Williams because they formed, joined, and assisted Local 4 and engaged in concerted activities, and to discourage other employees from engaging in these activities, we shall order the Respondent to offer them full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. We also shall order that the Respondent make Bradshaw and Williams whole, with interest, for any loss of earnings and other benefits that they may have suffered as a result of the unlawful discharges. Backpay shall be computed in accordance with *F.W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In accordance with our decision in *King Soopers, Inc.*, 364 NLRB No. 93 (2016), enfd. in pertinent part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate Bradshaw and Williams for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-

for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra.

We shall order the Respondent to compensate Bradshaw and Williams for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016). In addition to the backpay-allocation report, we shall order the Respondent to file with the Regional Director for Region 25 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award. *Cascades Containerboard Packaging*, 370 NLRB No. 76 (2021).

Additionally, we will order the Respondent to remove from its files any reference to the unlawful discharges of Perry Bradshaw and Jonathan Williams and to notify them in writing that this has been done and that the unlawful discharges will not be used against them in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Medina General Construction, LLC, Lafayette, Indiana, its officers, agents, successors, and assigns shall:

1. Cease and desist from

(a) Discharging or otherwise discriminating against employees because they support Local 4 and engage in concerted activities, or to discourage other employees from engaging in these activities.

(b) Coercively interrogating employees about their union membership, sympathies, or activities.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Perry Bradshaw and Jonathan Williams full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make Perry Bradshaw and Jonathan Williams whole for any loss of earnings and other benefits suffered as a result of the unlawful discharges, in the manner set forth in the remedy section of this decision.

(c) Compensate Perry Bradshaw and Jonathan Williams for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and file with the Regional

Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(d) File with the Regional Director for Region 25 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

(e) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges of Perry Bradshaw and Jonathan Williams and, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

(f) Preserve and, within 14 days of a request or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Lafayette, Indiana, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 11, 2018.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 25 a sworn certification of a responsible official on a form provided by the Region

attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 11, 2021

Lauren McFerran, Chairman

William J. Emanuel, Member

John F. Ring Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you because you support and assist a union or engage in protected concerted activities, or to discourage other employees from engaging in these activities.

WE WILL NOT coercively interrogate you about your union membership, sympathies, or activities.

² If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting

of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, within 14 days from the date of the Board's Order, offer Perry Bradshaw and Jonathan Williams full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Perry Bradshaw and Jonathan Williams whole for any loss of earnings and other benefits suffered as a result of their unlawful discharges, minus any net interim earnings, plus interest, and WE WILL also make them whole for reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Perry Bradshaw and Jonathan Williams for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 25, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

WE WILL file with the Regional Director for Region 25 a copy of each backpay recipient's corresponding W-2 form(s) reflecting the backpay award.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharges of Perry Bradshaw and Jonathan Williams and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the discharges will not be used against them in any way.

MEDINA GENERAL CONSTRUCTION, LLC

The Board's decision can be found at www.nlr.gov/case/25-CA-224263 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

